

**Preliminary Hearing  
Jackson County Ditch #3  
December 10, 2015**

**ATTENDANCE**

Managers present: Bruce Leinen, Jim Buschena, Dale Bartosh, Gary Ewert, and Roger Hartman  
Staff: Jan Voit

Others: Dave Macek, Jackson County; Bruce Krahmer, legal counsel for Kay Estate; Bruce Sellers, Wendland Sellers Bromeland, PA; Chuck Brandel, I & S Group; Ryan Anderson, I & S Group; Klay Walinga, Fairland Management; Mike Tow, Tow Law Firm, Ltd.; Kevin Nordquist, Jackson County; Kurt Deter, Rinke-Noonan; Chuck Dewanz, Fairland Management; Paul Henning, Hoddy Thompson, Dan Cranston, Harvey Kruger, Lois Kruger, Robert Lange, Marles Lange, Don Stenzel, Mark Rademacher, Matt Henning, David Henning, Perry Cranston, Vern Bass, Verlin Bass, Nila Pederson, David Post, Dave Pomerence, Brad Baumgard, Jim Baumgard, Terry Post, Larry Henning, Keith Tordsen, Gerald McConkey, Kevin Schmid, and Steve Schmitz

**1. Call to Order**

Jim Buschena called the meeting to order at 4:30 p.m. Introductions were done.

On September 10, 2014 a petition for the proposed improvement of Jackson County Ditch (CD) #3 was presented to the Board of Managers (Board) of the HLWD. The petition was reviewed by HLWD Legal Counsel, Mike Tow and approved by the board of managers on October 21, 2014. Chuck Brandel, I & S Group, was appointed as engineer for the project and was instructed to draft an engineer's preliminary report.

The preliminary report was submitted to the board of managers on November 10, 2015. An *Order and Notice of Hearing for Preliminary Hearing* was issued on November 17, 2015.

The purpose of tonight's meeting is to review the engineer's reports and take testimony from all parties to determine whether to proceed with the project or dismiss the petition.

**2. Determine the Sufficiency of the Petition**

The attorney for the HLWD has reviewed the petition. All legal requirements have been met. The petition has been deemed adequate.

**3. Determine Sufficiency of Bond**

On September 10, 2014, the petitioners submitted a cost bond of \$40,000.00. On December 11, 2014 a bond rider of \$60,000 was submitted. On February 17, 2015 a bond rider of \$50,000 was submitted. On May 19, 2015 a bond rider of \$75,000 was submitted.

The funds provided to date are adequate to cover costs incurred through the preliminary hearing. Should the Board vote for continued proceedings, additional funds may be needed to cover the costs of the final survey and viewers. The costs will be monitored on a monthly basis and an additional bond would be required of the petitioners pursuant to Minn.Stat. 103E.202, Subd. 6, if the costs incurred before the proposed drainage project is established will exceed the amount of the petitioner's bond.

#### **4. Read Department of Natural Resources (DNR) Commissioner's Report**

On November 4, 2015, Jim Sehl, DNR, provided the following comments on the preliminary engineer's report.

On behalf of the Director of the Division of Ecological and Water Resources of the DNR, I offer the following comments on the Preliminary Engineer's Report (PER) for the project referenced above, in accordance with Minnesota statutes section 103E.255.

Of general concern in all proposed ditch improvement is the cumulative effect that the project may have upon downstream water resources, natural resources, and property owners in terms of quantity and quality of water that is received. Project specific and cumulative impacts from ditch projects can result in downstream flooding, erosion, and a decrease in water quality. For these reasons, we urge careful evaluation of the project to ensure it is consistent with Priority Concerns identified in the Jackson County Water Management Plan (Water Plan). The Water Plan includes priority concerns that address surface water quality and drainage management.

The Water Plan prioritizes the reduction of erosion and runoff. During peak flow periods (i.e. spring runoff) runoff from agricultural lands can be reduced through the use of cover crops. Cover crops help retain topsoil on the land, improve soil structure, aid in the infiltration and storage of soil moisture, and improve water quality. The retention and health of topsoil is vital to long-term agricultural production. The use of cover crops in the watershed could reduce the need to expand ditch systems, stabilize ditch and stream banks, and decrease the frequency of ditch cleanouts resulting in lower landowner costs for ditch maintenance.

The Agricultural BMP Handbook for Minnesota has been developed by the Minnesota Department of Agriculture to address water quality impairments. The document provides a review of 30 conservation practices that are designed to enhance agriculture's role in addressing water quality concerns in Minnesota. Engineer reports should include the appropriate BMPs for the project and landowners should be encouraged to implement them. The Agricultural BMP Handbook for Minnesota can be viewed at the following link: <http://www.mda.state.mn.us/protecting/cleanwaterfund/research/agbmphandbook.sapx>

The end of the Main open ditch and outlet into the public watercourse of Okabena Creek are located in a Reinvest In Minnesota easement. Aerial images indicate that work has been done within the easement to restore and create wetlands that provide water retention. Coordination should occur with the landowner and Board of Water and Soil Resources to determine if additional water retention can be incorporated in the RIM easement in the vicinity of the Main open ditch. Additional water retention has the potential to reduce downstream flows, sediment, and nutrients from entering Okabena Creek. Okabena Creek is on the Minnesota Pollution Control Agency's Impaired Waters List for turbidity and fecal coliform.

Another option to decrease outlet flows is to reduce the proposed tile size when the drainage coefficient exceeds the Natural Resources Conservation Service (NRCS) recommended drainage coefficient of 0.50 in/day. Reducing the proposed tile size will not

only reduce outlet flows during major flood events, but it will also decrease the cost of the tile used for the ditch project. Over 25 of the tile replacements exceed a drainage coefficient of 0.75 in/day. The tile sizes should be reduced or at a minimum the Final Engineers Report (FER) should explain why so many of the drainage coefficients significantly exceed the NRCS recommended drainage coefficient of 0.50 in/day.

The DNR supports the inclusion of the 2-stage open ditch, low-flow weir, side inlets, water quality inlets, and other Best Management Practices as outlined in the PER. On page 9 it indicates the low-flow weir will be five and a half feet tall and forty feet wide with a two-foot wide opening. At what flood event will the water flow over the top of the weir?

The DNR recommends that the FER include a copy of the DNR letter on the PER and responses to each issue. Providing this information will enable the drainage authority, landowners, and agencies to more easily assess the project as decisions are made.

Please contact Kevin Mixon, Regional Environmental Assessment Ecologist, at (507-359-6073; or email [kevin.mixon@state.mn.us](mailto:kevin.mixon@state.mn.us)) if you have any general questions about this letter.

## **5. Take and Consideration of the Evidence**

Chuck Brandel gave a PowerPoint presentation explaining the engineer's preliminary report. It is the recommendation of your engineer that the project, including separable maintenance as proposed, is cost effective, practical and feasible, and its necessity has been described. The project will be a public benefit and contribute to the public welfare and should be considered for final approval.

Jim Buschena asked for comments from Bruce Sellers, petitioners' attorney. Mr. Sellers made no comments.

Jim Buschena explained that testimony would be taken from petitioners or objectors to the petition. Speakers must identify themselves and state the nature of their interest. Each person is given at least one opportunity to speak.

Gary Ewert asked at what point will water flow over the weir. Chuck Brandel stated that it would happen during a 5-year storm event.

Kurt Deter asked about Sections 12 and 13 by the outlet. He asked for confirmation that the drainage in those sections is not improved. Chuck Brandel explained that the drainage is not improved, but will match close to existing grade.

Kurt Deter asked that when the ditch is full, is there a length of time the water will be above the tile lines because of the weir. Chuck Brandel said that the goal is to drain the water down in 24 hours. However, it may back up some.

Jackson County is currently redetermining the benefits on Jackson CD 3. The viewers performing the redetermination are Ron Ringquist, Tom Mahoney, Milo Holland, and Dan Ruby. It is contemplated that the redetermined benefits will be completed and available for use by the viewers on this project.

Kurt Deter asked if the redetermination hearing would be held before the benefits are determined. Chuck Brandel stated that it would.

Bruce Krahmer asked if it was possible to have the stub branch 8 extended so there is a better outlet. Chuck Brandel said that it could be done without a lot of additional cost.

Chuck Brandel explained that 16.5 foot buffers will be established on all the open ditches.

Dave Henning said that in Section 23 of Alba Township County Road 64 acts as a dike to keep water from coming on to the farm. There is also overland flow from Ditch 84. Chuck Brandel proposed meeting with county staff to look at the area.

Harvey Kruger asked about Branch 15 in Section 14 of Alba Township. In the proposed improvement there is only a small amount of tile going into the property. He inquired if the line could be installed up to the catch basin. He also requested the installation of a 12" tile, rather than an 8". Chuck Brandel stated that he would check into it. The existing drainage coefficient is 0.18" and it is proposed to be a 1.8" drainage coefficient. It is possible that a 12" tile at a flatter grade would be able to meet the NRCS standard.

Harvey Kruger asked if the boundary of the system covers Ditch 84. Chuck Brandel explained that Ditch 84 does drain in County Ditch 3. Because of that the viewers may potentially assess land within Ditch 84.

Harvey Kruger asked about the original boundary of County Ditch 3 and if land on the eastern edge should be draining into Ditch 84. Chuck Brandel explained that Ditch 84 could easily be a part of CD 3. That has not be requested. Water from the eastern edge of the system should not be draining into Ditch 84. Any lines that should not go that way will be corrected as part of the redetermination.

The board took time to read through the required environmental criteria to ensure that all of the items had been addressed.

## **6. Action by the Board**

### ***Proposed Findings on Required Considerations:***

- Bruce Leinen made a motion that based upon the evidence, the Board finds that the private and public benefits will exceed the costs of the proposed drainage project. Gary Ewert seconded this. Motion carried unanimously.
- Gary Ewert made a motion that based upon the evidence, the Board finds that anticipated agricultural land acreage availability and use in the drainage project or system will be increased from the present availability and use of the land. Dale Bartosh seconded this. Motion carried unanimously.
- Gary Ewert made a motion that based upon the evidence, the Board finds that anticipated land use within the drainage project or system will be improved from the present use of the land. Roger Hartman seconded this. Motion carried unanimously.
- Roger Hartman made a motion that based upon the evidence, the Board finds that the flooding characteristics of property in the drainage project or system and

downstream for 5-, 10-, 25-, and 50-year flood events will be improved. Gary Ewert seconded this. Motion carried unanimously.

- Jim Buschena made a motion that based upon the evidence, the Board finds that there are no viable alternative measures to drain the waters in the project area, nor that there are feasible alternative measures to conserve, allocate, and use the waters in the project area, including storage and retention of drainage waters. Bruce Leinen seconded this. Motion carried unanimously.
- Bruce Leinen made a motion that based upon the evidence, the Board finds that there is a positive effect on water quality of constructing the proposed drainage project; Dale Bartosh seconded this. Motion carried unanimously.
- Dale Bartosh made a motion that based upon the evidence, the Board finds that there is an insignificant effect upon fish and wildlife resources affected by the proposed drainage project. Roger Hartman seconded this. Motion carried unanimously.
- Gary Ewert made a motion that based upon the evidence, the Board finds that the shallow groundwater availability, distribution, and use in the drainage project or system will be improved. Roger Hartman seconded this. Motion carried unanimously.
- Roger Hartman made a motion that based upon the evidence, the Board finds that the overall environmental impact of the above criteria relating to the proposed drainage project is insignificant. Dale Bartosh seconded this. Motion carried unanimously.

***Determination of public utility, benefit, or welfare***

Jim Buschena made a motion that based upon the evidence, the Board finds that the proposed drainage project will be of public utility, benefit, or welfare in that it will protect agricultural lands from overflow, and will reclaim or render suitable for cultivation agricultural lands which are normally wet and needing drainage. Bruce Leinen seconded this. Motion carried unanimously.

***Adequacy of Outlet***

Bruce Leinen made a motion that based upon the evidence the Board finds that the outlet for the proposed drainage project is adequate to sustain the flow of water that is anticipated by the improvement. Dale Bartosh seconded this. Motion carried unanimously.

***Separable Maintenance***

Dale Bartosh made a motion that based upon the petitioners' request, if continued proceedings are ordered, the engineer shall be required to determine the applicability of separable maintenance under Minn.Stat. 103E.215, Subd. 6, in his final report. Jim Buschena seconded this. Motion carried unanimously.

***Proposed Finding for Continued Proceedings***

Gary Ewert made a motion that based upon the evidence, the Board finds that the proposal as stated in the petition, is feasible, and there is a necessity for it. Additionally, the Board finds that the public benefit is greater than the environmental impact of the drainage

project and that the outlet is adequate; therefore, it is appropriate for the Board to direct the engineer to proceed with a detailed survey and to issue its order appointing viewers. Roger Hartman seconded this. Motion carried unanimously.

Roger Hartman made a motion that based upon the findings, the Board's order directing the engineer to proceed with a detailed survey and appointing viewers shall issue forthwith. Dale Bartosh seconded this. Motion carried unanimously.

Ron Ringquist, Tom Mahoney, Milo Holland, and Dan Ruby are completing the redetermination of benefits on Jackson CD 3. The same viewers will be appointed as viewers on this project to conserve viewing costs.

Chuck Brandel explained that the final hearing could potentially happen in March. Jackson County would have to hold a hearing on the redetermination first. Construction could start next fall.

## **7. Adjournment**

The preliminary hearing adjourned at 4:48 p.m.

Dale Bartosh  
Secretary